

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/511,694
Applicant : Mussawir-Key, Frederick Wade
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Title : CHEESE SUBSTITUTES

Conf. No. : 4057
Art Unit : 1794
Examiner : Wong, Leslie A.

Customer No. : 00116
Docket No. : MORE-37106

REPLY BRIEF

This Reply Brief is filed in response to the Examiner's Answer mailed October 14, 2009. Accordingly, this brief is due by December 14, 2009 and is timely filed before that date. If there are any fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. MORE-37106.

Claim 1 is Patentably Distinct from the Prior Art

The product of claim 1 is formed by blending, *inter alia*, "1-25% non-liquid vegetable fat component." In the Examiner's Answer, the Examiner points out that claim 1 is a product claim, implying that the state of matter for the fat while the product is being made is irrelevant to the final product's structure. Examiner's Answer, at p. 5.

It cannot be disputed that process limitations in product claims are entitled to patentable weight to the extent such process limitations connote structure. Here, the product of claim 1 is made by blending a number of ingredients, including a vegetable fat component in a non-liquid state. The structural result of this process is that in the final claimed product the fat component is in the form of crumbles together with the remaining solid particulates in the mixture due to

how it was made. This crumbly particulate composition provides a more natural texture in the mouth that is more reminiscent of real grated parmesan cheese compared to Blackstock's composition.

In contrast, Blackstock's product is made by blending the solid components with the fat in the liquid state. This produces carrier particles having a layer of fat on the surface of those particles. That is, because the fat component is provided in a liquid state before combining with Blackstock's solid carrier particles, the fat forms a liquid coating over those particles. *See* Blackstock at col. 1, lines 70-72 and col. 2, lines 1-5. *See also* col. 3, lines 31-39, describing the "fat encapsulated carrier particles" produced in Blackstock. If the fat is initially supplied in the solid state in Blackstock, it is first elevated to a high temperature to bring it into the liquid state prior to blending. *See* Blackstock at col. 3, lines 72-75. Otherwise such "fat encapsulated carrier particles" would not be produced because the fat would not coat ("encapsulate") those particles.

The Examiner stated that "Blackstock et al teach any suitable fat (see column 2, lines 46-55). Blackstock et al specifically teach fats that are **solid** above 100°F (see column 2, lines 51-55)." Examiner's Answer, at p. 5. This is true. But the Examiner failed to mention that in Blackstock when a fat having a high melting temperature (and therefore that is supplied in solid form) is used, that fat is heated to liquefy it prior to blending to form the fat encapsulated particles in final product. This is clear in Blackstock at col. 3, lines 67-71, wherein the dry ingredients comprise the carrier and dry flavorings, and the liquid ingredients comprise the fat, liquid flavorings and coloring. It is also clear in all of the examples, wherein the fat component is provided as a liquid-phase oil or mixture of oils to be combined with the solid particles.

In summary, even though "any suitable fat" might be used in Blackstock, if the fat is initially solid, it is liquefied prior to blending so that it can coat ("encapsulate") the carrier

particles. Blackstock's final product consists of a "fat encapsulated carrier particle" having a "coating agent [covering] the fat encapsulated particle." Blackstock, col. 3, lines 31-36. "The purpose of the coating agent is to give free flowability to the product. The fat coated carrier particle otherwise might well have a tendency to adhere together or at least resist pouring." *Id.* at col. 3, lines 36-39. Blackstock does not disclose a composition as-claimed, wherein the fat is combined with the other solid components in a non-liquid state so it will be in the form of crumbles in the final product. Instead, the fat is a coating over the carrier particles in Blackstock, requiring a powder coating to prevent them from sticking together. This structural difference between claim 1 and Blackstock constitutes a patentable distinction that is not anticipated or rendered obvious by the reference.

The Examiner asserted the "non-liquid limitation would be inherent and/or obvious to that of Blackstock et al as the same components are used." Examiner's Answer, at p. 3. Respectfully, the "non-liquid" limitation certainly is not inherent for the reasons already given. Indeed, Blackstock expressly uses a liquid-phase fat, not a non-liquid-phase one, resulting in different structure. Regarding obviousness, no statement of motivation is given to suggest why one of skill in the art would utilize the fat in the non-liquid state in Blackstock's process. Indeed, doing so would completely change Blackstock's composition, which no longer would consist of the fat-encapsulated particles called for in that reference.

Accordingly, the Examiner has failed to set forth a *prima facie* case of obviousness, and the rejection of claim 1 should be reversed.

Claim 17 is Patentably Distinct from the Prior Art

Regarding claim 17, the Examiner has argued that Blackstock teaches fats that are solids over 100°F, and that for this reason the reference discloses mixing the fat in the solid state.

Again, this completely ignores that in Blackstock when a solid-phase fat is used, that fat is first heated to liquefy it before mixing with the solid components to produce Blackstock's "fat encapsulated carrier particle" composition. See col. 3, lines 63-75 of Blackstock, and the remaining arguments set forth above. No reason is given or apparent why one would use a non-liquid-phase fat in Blackstock, which would fundamentally alter Blackstock's composition so that it no longer consisted of the "fat encapsulated carrier particles" called for in the reference.

Accordingly, for similar reasons as above the Examiner has failed to set forth a *prima facie* case of obviousness for claim 17, and the rejection thereof should be reversed.

Conclusion

All remaining claims depend from either claim 1 or claim 17, and accordingly are respectfully submitted to be patentable for at least the same reasons as the independent claims. For the foregoing reasons as well as those set forth in the Appeal Brief, it is respectfully requested that all claim rejections be reversed and that the application be passed to allowance.

Respectfully submitted,
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